

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DN, CN, and JJ, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KATHLEEN ASH,

Respondent-Appellant.

UNPUBLISHED
November 28, 2000

No. 226781
Kent Circuit Court
Family Division
LC No. 98-001089-NA

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Respondent Kathleen Ash appeals as of right challenging the family court's order terminating her parental rights to her three¹ sons, DN, CN, and JJ, pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(g) and MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). We affirm.

I. Basic Facts And Procedural History

The original petition, as amended at the preliminary hearing on October 12, 1998, made four allegations. First, Ash had a long history of chronically neglecting her children and had misrepresented her circumstances to Family Independence Agency staff. Second, she left the three boys in a park without food or supervision for six hours while she visited her husband in the hospital. Third, on August 24, 1998, Ash and the children were homeless and, at that time, she was arrested on an outstanding warrant for an unspecified offense. Fourth, at the time of the hearing, Ash remained in jail and continued to refuse to sign a voluntary placement form for her sons.

¹ Ash's fourth son, an infant, passed away in February 1998. Although the reason for his death is not clear, there are no allegations that he died because of abuse or neglect.

Ash admitted to the allegations in the petition. Although she did not give any great detail to the circumstances described in the petition, she noted that she believed that the children had adequate supervision at the time she left them in the park. She also said that she had refused to sign the temporary placement forms because she had not been given an opportunity to read them. She had two “options,” presumably living arrangements, but could not follow through with either option because she was jailed. The family court found a sufficient factual basis to accept Ash’s plea.

After a short break in the proceedings, the family court held a dispositional hearing at which time it endorsed the preexisting foster arrangement for the three boys; DN and CN were living with their paternal aunt and uncle. It is not clear whether JJ was living in a different foster home. The original parent/agency agreement between Ash and Bethany Christian Services (BCS) required Ash to find suitable housing, obtain employment, undergo a substance abuse assessment and psychological evaluation, attend parenting classes and counseling, and visit her children as well as her BCS caseworker on a regular basis.

Ash made inconsistent progress under the parent/agency agreement. She attended supervised visitation, parenting classes, and counseling. The boys displayed their affection for their mother during visitations and Ash had improved her ability to redirect them when they misbehaved; however, Ash sometimes had problems following through with discipline. Kara Van Drie, a BCS caseworker, reported that Ash did not open up in counseling in a way that allowed the professionals to assess whether she had made significant progress. Ash had expressed some concern over how to deal with CN’s behavioral problems but had not exhibited progress in parenting techniques that gave Van Drie confidence in her ability to parent the children. Urine and hair analysis as well as breathalyzer tests confirmed that Ash was not using alcohol or drugs. Still, Van Drie suggested that Ash attend Alcoholics Anonymous or Narcotics Anonymous so that she would strengthen her coping mechanisms and not resort to drug or alcohol use if she was stressed. Ash did not attend AA or NA because she did not think it was necessary. Van Drie continued to be concerned about the choices Ash made about having many men in her life.

As for her housing and employment, two factors that played a large role in FIA’s decision to file the petition in this case, Ash made intermittent – but not permanent – progress. Although her need to use public transportation limited her options for work hours, Ash originally found a job working at Toys R Us as a customer service representative in fall 1998. Her employer thought she had improved and had no complaints as of the March 1999 dispositional review hearing. Additionally, by that time, she had been in the same apartment for 2½ months, had resolved a rent dispute with her landlord, and was working to furnish the apartment.

Ash lost this apartment in May 1999 because she could not pay her rent, having lost her job at Toys R Us after a viral illness. Although her former boss at Toys R Us said that she might be able to have her old job if she brought in a doctor’s note explaining the illness, she did not follow through with that offer. Ash claimed that she had given her former boss medical documentation concerning her illness, but she did not dispute that she had failed to follow up on being reinstated to her job at Toys R Us. At this time, she was living with a friend and had applied to Kindred, a housing assistance program, where she was on a waiting list.

By the June 1999 dispositional review hearing, Ash had secured a job working two days each week at a laundromat while she looked for a job at variety of stores, including K-Mart, Big Lots, and Wal-Mart. Although she lost her job at the laundromat after less than a month, Ash found a job working twenty to thirty hours each week at K-Mart in August 1999.

As of the September 1999 dispositional review hearing, Van Drie and Ash estimated that she would be able to find housing through the Kindred program by around October 1, 1999. However, even if Ash did find housing through Kindred, she would not be allowed to have her children live with her until she had been in the apartment for six months according to Kindred's rules. At this hearing, Van Drie recommended terminating Ash's parental rights because she had failed to maintain stable housing and employment, the children had been in foster care for a year, and she had not "internalized" the lessons taught in her parenting classes. She did not render an opinion on whether termination was in the children's best interests, but she did say that returning DN and JJ to Ash would be risky for their emotional and physical well-being. Don Lappinga, CN's caseworker, thought that CN's psychiatric problems made returning him to his mother's custody unwise because it would be difficult for her to offer the support he needed. Ash said that she was still in poor health, but her doctors expected her to be completely healthy by December 1999. She said that she was willing to do whatever was necessary to regain custody and explained that some of her problems with her parenting classes were due to miscommunication; she thought she was working on significant goals with her sons while the instructors thought she should be determining and working on new goals. In response to Van Drie's concern about her relationships with men, she said that most of her friends were male and, with the exception of a single night, she had not had a physical relationship with any of these men. The family court ordered termination proceedings after this hearing.

The termination petition, filed on November 15, 1999, restated the allegations in the original petition, summarized Ash's problems with securing housing and employment, and noted insufficient progress in her therapy and parenting classes. At the termination hearing in January 2000, Gayle Robbert-Voogt, a social worker at BCS, said that she had met with Ash in November 1999. At that time, Ash said that she had been in the Kindred program for only a few weeks and had several months before her children could join her in her subsidized apartment. Robbert-Voogt was concerned about the number of gifts and the type of food Ash brought her boys during visits, as well as two situations in which Ash encouraged the children not to tell the truth about small gifts she had given them. Still, Robbert-Voogt generally thought Ash was "appropriate" during these visits and was able to adjust her behavior as needed. Sometime between November 1999 and January 2000, Ash began experiencing problems paying her rent, apparently because she injured her hand and could not work as much. Robbert-Voogt recommending terminating Ash's parental rights because she would not be able to have her children live with her in any reasonably short period of time and the boys were showing signs of stress from their temporary foster care placements.

Ash said that her work hours had been cut because of her injury but also because there was less work available after the Christmas seasons. She estimated that she would be in the Kindred program for twelve to eighteen months and, other than problems with rent, she was on schedule with her program goals and benefiting greatly. Also, she had just found a way to catch up with her rent payments by giving the program her next paycheck and relying on a gift of \$150

from a friend. She admitted that she was behind in rent partly because she gave her boys Christmas gifts. She explained that she told the boys not to tell others about some small gifts that she had given them because, ordinarily, her gifts were thrown away. She added that she thought that she handled the children well and she was concerned about keeping them together because the boys offered support to each other. She reported that the boys liked being with her. Ash stressed that she had complied with all the conditions BCS had imposed in her case and that the remaining problems in her situation, such as an inconsistent source of income, were not her fault. Although she agreed that she could seem distant at times during her therapy sessions, she explained that it was her coping mechanism.

The family court subsequently issued a written order and opinion terminating Ash's parental rights. After summarizing the allegations in the petitions filed in this case, the family court gave an overview of Robbert-Voogt's testimony and conclusion that termination was in the boys' best interests. The family court did not make any independent findings of fact. Rather, it adopted Robbert-Voogt's findings as its own. The family court concluded that there was clear and convincing evidence to terminate Ash's parental rights under subsection (c)(i) and (g) and that termination was in the children's best interests because there is a "legislative mandate for permanency"

II. Standard Of Review

This Court reviews all aspects of a family court's decision to terminate parental rights for clear error.²

III. The Termination Decision

Preliminarily, we note that the family court articulated two separate legal bases to terminate Ash's parental rights: failure to correct conditions leading to the adjudication and failure to provide proper care and custody. On appeal, Ash does not dispute the family court's decision to terminate her parental rights for failing to provide proper care and custody. This alone would be reason to affirm the family court's decision because it need only find one reason to support termination.³

Regardless of this alternative ground for affirming, the family court properly concluded that there was clear and convincing evidence that the conditions leading to adjudication had not been rectified by the time of the termination proceedings and that they were not likely to be cured within a reasonable time given the children's ages. Although Ash correctly notes that the Kindred program had provided her with some stability in her housing situation by October 1999, she conceded that she continued to have problems with having a steady income and that the children would not be able to live with her in her subsidized housing for several months. Robbert-Voogt also testified that the children were showing signs of stress from their temporary

² *In re Huisman*, 230 Mich App 372, 384; 584 NW2d 349 (1998), rejected on other grounds by *In re Trejo*, 462 Mich 341, 353, n 10; 612 NW2d 407 (2000).

³ See *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

foster placements, which underscored why time was of the essence in this case. Ash had received FIA assistance even before this case was opened and she also had fifteen months in which to prove that she could secure housing and employment that would no longer put her children at risk of being homeless. While it is fair to say that not every problem she encountered during this fifteen month period was her fault, by January 2000 she had not demonstrated that her living situation was sufficiently secure that she would be able to have her sons live with her in any reasonable amount of time given their special needs. There simply is no basis from which to conclude that the family court erred in terminating Ash's parental rights on this basis.

IV. Best Interests

MCL 712A.19b(5); MSA 27.3178(598.19b)(5) states that a family court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate. In other words, termination is mandatory once the court finds evidence of at least one statutory ground to terminate parental rights. See *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999). Only if the family court finds evidence on the record as a whole that termination is *not* in the child's best interests can it refuse to terminate parental rights. See *Trejo*, *supra* at 353-354. In this case, the family court affirmatively stated that termination was in the children's best interests, which Ash now disputes.

There is evidence on the record to support Ash's argument that she and her sons loved each other and had a bond. For instance, Van Drie and Robbert-Voogt reported that Ash was good with the children during visits. The concern Ash showed for her children through her testimony demonstrated her affection for her sons. Moreover, no one ever disputed that they had a bond. Still, the children had pressing emotional needs that were not fully met because they were in foster care and not a permanent home. Lappinga even testified that he thought it would be unwise to return CN to Ash's custody because of the depth of CN's problems. Given Ash's inability to provide any of the children with a stable home in any certain amount of time, much less a reasonable amount of time given the children's ages, it is impossible to say that the family court clearly erred when it concluded that termination was in the children's best interests.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ William C. Whitbeck